IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 36042 of 2003(N)

PETITIONER:

B.S.CHANDY,
WORKER, PUBLIC HEALTH WATER SUPPLY SECTION II
(P.H.W.S), CONTROL ROOM OF WATER AUTHORITY,
ARUVIKKARA, THIRUVANANTHAPURAM.

BY ADV. DR.K.P.KYLASANATHA PILLAY,
SRI.ARUN.B.VARGHESE,
SRI.T.P.DEYANANTHAN,
SRI.V.SADASIVAN.

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVT.,
   DEPARTMENT OF WATER AUTHORITY,GOVT.SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **KERALA WATER AUTHORITY,**
   REPRESENTED BY ITS MANAGING DIRECTOR, JALABHAVAN,
   VELLAYAMBALAM, THIRUVANANTHAPURAM.

3. **EXECUTIVE ENGINEER,**
   KERALA WATER AUTHORITY, WATER SUPPLY DIVISION,
   VELAYAMBALAM, THIRUVANANTHAPURAM.

4. **ASSISTANT EXECUTIVE ENGINEER,**
   WATER SUPPLY SUB DIVISION, ARUVIKKARA,
   THIRUVANANTHAPURAM.

5. ASSISTANT ENGINEER,
KERALA WATER AUTHORITY, WATER SUPPLY SECTION II,
ARUVIKKARA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.BABU VARGHESE, SC, KWA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.36042/2003:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT DTD. 11/06/2003 IN O.P. NO. 18184/2003.

EXT.P.2: COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS ISSUED TO THE PETITIONER.

EXT.P.3: COPY OF THE ORDER NO. AC 1-1674/97 DTD. 26/09/03 ISSUED BY THE R.3.

EXT.P.4: COPY OF THE LETTER NO. 1674/97/GL DTD. 07/10/2003 ISSUED TO THE PETITIONER.

EXT.P.5: COPIES MASS PETITION DTD. 08/07/2003 OBTAINED FROM AMONG THE STAFF OF THE RESPONDENT'S OFFICE.

EXT.P.6: COPY OF THE NOTIFICATION S.R.O. NO. 409/2002 DTD. 16/05/2002 ISSUED BY THE GOVERNMENT.

EXT.P.7: COPY OF THE REPRESENTATION DTD. 07/12/2003 SUBMITTED BEFORE THE R.2.

EXT.P.8: COPY OF THE REMINDER DTD. 06/01/2004 SUBMITTED TO THE R.2.

EXT.P.9: COPY OF THE POSTAL ACKNOWLEDGEMENT CARD SHOWING THE RECEIPT OF EXT P.8.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.36042 OF 2003

Dated this the 27th day of July, 2007

JUDGMENT

This is a matter relating to imposition of punishment of barring of two increments with cumulative effect. The specific contention of the petitioner is that he was not given appropriate opportunity to cross examine the witnesses before concluding the enquiry. It is argued that Rule 15 of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960, which applies, has not been appropriately followed and therefore, the imposition of penalty is bad. Reliance is placed on the decision reported in **Sahadevan** v. **State of Kerala** [1997 (2) KLT 150] rendered following the decision of the Apex Court in **Kulwant Singh Gill** v. **State of Punjab** [1991 Supp.(1) SCC 504]. As of now, the issue of imposition of the punishment in question can be considered by the competent appellate authority within the Water Authority because the impugned order is passed by the Executive Engineer.

2. Having regard to the time lag, this writ petition is disposed of directing that if the petitioner files an appeal against the impugned decision, before the Managing Director of the Water Authority, the same shall be considered after affording the petitioner an opportunity of being heard and a final decision shall be taken, adverting to and considering all the contentions raised by him. The petitioner also appears to have a request to the Water Authority to consider posting him in Aruvikkara. Such question would also gain the attention of the Manging Director. A final decision shall be taken on the aforesaid within an outer limit of four months from the date of receipt of the appeal or a copy of this judgment, whichever is later, provided such appeal filed within an outer limit of one month from today.

3. The writ petition is disposed of with the above directions. The petitioner is directed to produce a copy of this judgment before the Managing Director, Kerala Water Authority, for compliance.

Before parting with this case, it has to be noted that in spite of a direction on 5.4.2004 that counter affidavit be filed in this case, no such counter affidavit has been placed on record and there is no appearance today, for the Water Authority.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.